

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 524 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

SMT PRABHABEN CHOTALAL ACHARYA

Versus

GEO-CHEM LABORATORIES (P) LTD

Appearance:

MR AM MEHTA for Petitioner

MR GAURANG H BHATT for Respondent No. 1

MR PF MAKWANA for Respondent No. 2

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 02/11/1999

ORAL JUDGEMENT

1. The appellant who is the widowed mother of the deceased Jashwantraai Chhotalal Acharya, the worker of respondent no.1 has filed this appeal challenging the judgment and order dated 30.6.1990 passed by the learned Civil Judge(Senior Division) and Ex-Officio Commissioner of Workmen's Compensation, Jamnagar, denying the amount of

penalty to her in fatal W.C.Application No. 28 of 1987. The learned Commissioner, by the impugned order, awarded an amount of Rs. 80,664/- as compensation amount from the respondents on account of death of the workman Jashwantraai Chhotalal Acharya, who died during the course of his employment with the respondent no.1. Since the respondent no.1 has deposited an amount of Rs. 41,661/towards the compensation, the learned Commissioner passed an order for the balance amount of Rs. 39,003/- with interest from the date of the application till its realisation.

2. The facts giving rise to this appeal, briefly stated, are as under:-

On 19.5.1986, the workman Jashwantraai Chhotalal Acharya, employed by the respondent no.1, received personal injuries by an accident which arose out of and during the course of his employment which resulted into the death on the same day. The cause of the injury and the death was that the deceased was sent to Bhavnagar by the respondent no.1 and when he was at Prashant Proteins Ltd, Bhavnagar, he met with an accident while he was performing his duty as per the instructions and order of the respondent no.1. The appellant is the widowed mother of the deceased and she was solely dependent on the deceased. The deceased was getting monthly wages of Rs. 1500/- at the time of his death and his age at the time of his death was 33 years. The appellant had claimed Rs. 1,20,996/- being the amount of compensation with interest at the rate of 12% p.a. from the date of the application. Since the workers of the respondent no.1 are insured with the respondent no.2, as such, both the respondents are jointly and severally liable to pay the amount of compensation to the appellant as claimed in the application.

3. The claim of the petitioner was resisted by the respondents by filing the reply. It was contended that the monthly wages of the deceased were Rs. 455/- and, therefore, taking 40% thereof, it would come to Rs. 199.40 and the amount of compensation would come to Rs. 36,600/-. The respondents have deposited Rs. 41,641/- in the Court. It was pointed out that as the respondent no.2 is responsible for the payment of compensation on the basis of the insurance, the respondent no.1 is not liable for any compensation. The respondent no.1 has denied to pay the amount of interest as well as amount of penalty. Similarly, the respondent no.2, in its reply, virtually stated the same thing as stated by the respondent no.1.

4. After considering the evidence on record, the learned Commissioner passed the impugned award, details whereof are stated in the foregoing paras.

5. Since the only question as to whether the appellant is entitled to get the amount of penalty for the delayed payment is required to be decided, it is necessary to consider the question as to whether the respondent no.1 was justified in not depositing the amount before the Commissioner at the earliest point of time.

6. It is the contention of the respondent no.1 that there was no intention to delay the payment of compensation. However, due to correspondence between the parties, the amount was not deposited in time. The learned Commissioner, it appears, was impressed by the fact that the amount of Rs. 41,641/- has been deposited by the respondent no.1 without there being any unnecessary delay and in view of the fact that the parties have exchanged correspondence between them, the respondent no.1 is not liable to pay the amount of penalty.

7. Section 4(1) of the Workmen's Compensation Act deals with the compensation to be paid when due and penalty for default. It reads as under:-

"4A. Compensation to be paid when due and penalty for default---(1) Compensation under section 4 shall be paid as soon as it falls due.

(2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the event of liability which he accepts, and such payment shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of the workman to make further claim.

(3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner may direct that, in addition to the amount due together with, if in the opinion of the Commissioner, there is no justification for the delay, a further sum not exceeding fifty per cent of such amount, shall be recovered from the

employer by way of penalty."

Reading the aforesaid provisions, it is clear that the compensation should be paid as soon as it becomes due. If the employer does not accept the liability to the extent claimed, he has to make provisional payment based on the extent of liability which he accepts without prejudice to the right of the workman to make any further claim. Since we are concerned with sub-section (3) which deals with the situation where any employer is in default in payment the compensation due within one month from the date it fell due, the Commissioner may direct payment of interest at the rate of 6% p.a. and the amount of arrears together with a further sum not exceeding 50% of such amount by way of penalty, if the Commissioner finds that there is no justification for delaying the payment. In view of this, whether the workman is entitled to interest as the compensation for delayed payment simpliciter and penalty for the unjustified delay in making the payment, the relevant which is to be considered is the date from which the compensation falls due to be paid.

8. This Court, in the case of Vagher Amad Hushen Vs. Secretary, G.E. Board and ors, 32 (2) GLR 1130, has decided the question, namely what should be the date for computing interest and penalty. It is held that:

"xxx to consider consider the question when the compensation under the Act falls due for the purpose of considering the question of interest and penalty to be levied thereon because the payment of compensation becomes liability of employer if personal injury is caused to the workman by accident which arose out of and in the course of employment. Therefore, the date on which the liability of employer to pay compensation arise, is the date on which the accident took place, which has arisen out of and in the course of employment. Section 4 of the Act prescribes scale of compensation. Section 4-A(1) of the Act makes it clear that the compensation is payable as soon as it becomes due. Therefore, in my opinion, the date on which the compensation becomes due is the date on which the accident took place in the course of employment or has arisen out of the employment and the liability to pay compensation and the date to pay compensation does not depend upon raising of claim thereon. In the Scheme of the

Act, it is not the right conferred on the workman to claim but liability imposed upon the employer to discharge on the happening of the event in the course of employment offered to him."

As far as the facts of the case on hand are concerned, the workman died on 19.5.1986 while performing his duty during the course of his employment. Therefore, the compensation becomes due on 19.5.1986, the date on which the accident took place. The respondent no.1, in the circumstances, therefore, is liable to pay the compensation within a month from the said date. Admittedly, the amount of compensation has not been deposited within a month from the date it fell due. On the contrary, on behalf of the appellant, a legal notice was addressed on 6.10.1996 to the respondent and the respondent no.1 was called upon to deposit the amount of compensation together with interest and penalty before the Workmen's Compensation Commissioner. Even though the said notice was received by the respondent no.1, nothing has been deposited and on the contrary, on 3.12.1986, a letter was sent by the respondent no.1 to the advocate of the appellant stating that they have already forwarded all the necessary papers. An information was sought in the said letter to know the address of the concerned Workmen's Compensation Commissioner at Bhavnagar, if not at Jamnagar. The concerned advocate of the appellant, on 8.12.1986, sent a reminder acknowledging the receipt of the letter dated 3.12.1986, pointing out that after he gave a notice dated 6.10.1986, the respondent no.1 failed to deposit the compensation amount and, therefore, the respondent no.1 is liable for the penalty and interest as per the provisions of the Workmen's Compensation Act. The respondent no.1 was reminded to deposit the amount of penalty and interest and the address of Workmen's Compensation Commissioner was supplied in the said reply. This correspondence would go to show that even though it is not necessary for the appellant to remind the employer to deposit the amount as it is the liability of the employer to deposit the amount under the provisions of the Act, and in spite of the fact that five months after the accident, a notice was addressed by the advocate on behalf of the appellant, nothing has been done by the respondent no.1 and it has simply entered into unnecessary correspondence with the advocate. On 22.12.1986, a further correspondence was made by the respondent no.1 with the advocate asking the advocate to make correspondence with the Insurance Company. It appears that on 5.1.1987, the respondent no.1 received a communication from the Workmen's Compensation Commissioner asking him to deposit the amount of

compensation in the Court failing which the company shall be liable to pay the penalty in accordance with the Workmen's Compensation Act. Again on 29.12.1986, the advocate addressed a letter to the respondent no.1 informing him that he was bound to inform the Workmen's Compensation Commissioner when the accident had resulted into death and that he was duty bound to deposit the amount of compensation before the Commissioner within a month. Neither the respondent no.1 had informed the Commissioner nor had he deposited the amount of compensation and, therefore, he has failed to do so. In the said letter, again a request was made to deposit the amount of compensation with 50% penalty and the interest at the rate of 15% p.a. On 5.1.1987, the respondent no.1 sought information from the Workmen's Compensation Commissioner as to what step he has taken in setting the compensation amount to be paid to the heirs of the deceased. The aforesaid correspondence will clearly go to show that the respondent no.1, instead of taking proper and legal advice and to see that the provisions of the Act are complied with, has totally misdirected himself in making unnecessary correspondence with the advocate and the Workmen's Compensation Commissioner. This is not expected of a Director of a Bombay-based company. The so-called ignorance of law cannot be made justifiable in not depositing the amount of compensation together with interest. Surprisingly, an untenable excuse was put forth before the advocate by letter dated 15.1.1987 by the respondent no.1 wherein it was stated that the name of late Jashwantraai Chhotalal Acharya was mentioned as Jayendrasinh Acharya in the police panchanama whereas in the school leaving certificate, it was mentioned as Jashwantraai Chhotalal Acharya. Secondly, it was pointed out that initially, the age mentioned on the death claim form was 37 years whereas later on after the receipt of the school leaving certificate, it shows that he was 33 years old; this technical discrepancy has created difficulty in the matter; to take over the discrepancy, it has been advised by the insurance company to make an affidavit in court about the real name and nick name and also about the age proof. In my opinion, the so-called discrepancy put forward by the respondent no.1 is totally irrelevant especially when the deceased was serving with the respondent no.1 and it was expected that the respondent no.1 should have found out the correct name of the deceased from their office record. Regarding the so-called discrepancy in the name of the deceased in the school leaving certificate and the police panchanama, if the respondent no.1 had taken proper legal advice, they could have obtained correct legal opinion that the school

leaving certificate is the best evidence in all respects and the correct name of the deceased mentioned in the school leaving certificate was Jashwantraai Chhotalal Acharya and none else. It appears that after receiving the affidavit from the appellant, the amount of compensation has been deposited with the Workmen's Compensation Commissioner on 2.4.1987. Thus, considering the evidence on record, it cannot be said that in view of the correspondence between the parties, the respondent no.1 was justified in not depositing the amount of compensation when it fell due. In my opinion, the Workmen's Compensation Commissioner has clearly committed an error and misdirected himself in absolving the respondent no.1 from his liability to pay the amount of penalty.

9. In this view of the matter, this appeal is allowed. The order passed by the Workmen's Compensation Commissioner which is impugned in this appeal not directing the respondent no.1 to pay the amount of penalty to the appellant is set aside. Considering the facts and circumstances of the case, I hold that the respondent no.1 is liable to pay the amount of compensation together with the interest and penalty and he is accordingly ordered to pay the amount of penalty to the appellant, quantified at Rs. 25,000/- (Rs. Twenty five thousand only), within six weeks from today. The appeal is partly allowed accordingly with no order as to costs.

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